

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Revision of the Commission's  
Rules to Ensure Compatibility  
with Enhanced 911 Emergency  
Calling Systems

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CC Docket No. 94-102

**COMMENTS OF AT&T WIRELESS SERVICES, INC.**

Pursuant to the Public Notice released December 4, 2000,<sup>1/</sup> AT&T Wireless Services, Inc. ("AT&T") hereby submits these comments in support of the petitions for waiver of the E911 Phase II implementation deadlines filed by Nextel Communications, Inc. and Nextel Partners, Inc. (collectively "Nextel"), and Hawaiian Wireless, Inc. ("HWI") in the above-captioned proceeding.<sup>2/</sup> Both Nextel<sup>3/</sup> and HWI<sup>4/</sup> have filed waiver requests demonstrating technology-related issues and exceptional circumstances that satisfy the prerequisites for a waiver of the Commission's rules generally and the more detailed requirements for a waiver of the Phase II rules set forth in the Fourth MO&O. Accordingly, Nextel's and HWI's petitions should be granted.

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<sup>1/</sup> See Public Notice, WTB Seeks Comment on Phase II E911 Implementation Waiver Requests Filed by Nextel Communications, Inc. and Hawaiian Wireless, Inc., CC Docket No. 94-102 (rel. December 4, 2000).

<sup>2/</sup> Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Fourth Memorandum Opinion and Order, FCC 00-326 (rel. Sept. 8, 2000) ("Fourth MO&O").

<sup>3/</sup> Nextel Communications, Inc. and Nextel Partners, Inc. Joint Report on Phase II Location Technology Implementation and Request for Waiver, filed November 9, 2000 ("Nextel Petition").

<sup>4/</sup> Hawaiian Wireless, Inc., Petition For Waiver, filed November 9, 2000 ("HWI Petition").

## DISCUSSION

Generally, the Commission's rules may be waived when there is good cause shown and when "special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest."<sup>5/</sup> In the context of the Phase II E-911 rules, the Commission has recognized that there may be instances where "technology-related issues" or "exceptional circumstances" make it impossible for a wireless carrier to deploy Phase II by October 1, 2001, and individual waivers could be granted in these circumstances.<sup>6/</sup> The Commission indicated that a request for such a waiver of the Phase II implementation rules should be "specific, focused and limited in scope, and with a clear path to full compliance."<sup>7/</sup>

Applying these standards, the Commission granted a Phase II waiver to VoiceStream wireless. The Commission found that VoiceStream's proposal could offer "significant public safety benefits" by immediately providing a level of accuracy and reliability greater than that provided under Phase I, while also ensuring the rapid initial deployment of ALI capability, with a relatively brief transition to even more precise levels of accuracy.<sup>8/</sup> The Commission also found that VoiceStream had satisfied the "special circumstances" requirement because the Network Software Solution/Enhanced Observed Time Difference of Arrival ("NSS/E-OTD") approach it proposed to use might be the only ALI solution available in the short term for carriers using GSM technology.<sup>9/</sup>

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<sup>5/</sup> Fourth MO&O at ¶ 43 (citing Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) and WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969)).

<sup>6/</sup> Id. at ¶ 43.

<sup>7/</sup> Id. at ¶ 44.

<sup>8/</sup> Id. at ¶¶ 57-60.

<sup>9/</sup> Id. at ¶ 56.

Nextel and HWI now make compelling cases for additional waivers of the Phase II implementation rules. While the circumstances that have led Nextel and HWI to seek waivers are unique, both requests reinforce what the FCC already has recognized in the VoiceStream context: carriers are dependent upon location technology vendors and equipment manufacturers to provide the necessary technology in sufficient time for the carrier to integrate, test, and deploy it before the Commission's deadlines. Nextel and HWI demonstrate how this problem can affect wireless carriers with a very limited number of equipment suppliers, but wireless carriers with multiple vendor relationships face the same challenge. Indeed, this problem increases exponentially with the number of vendors upon whom a carrier must rely, because no one carrier typically represents a large enough share of the vendor's sales volume to dictate significant changes to the vendor's plans regarding major technical innovations. When considering requests for waivers of the Phase II implementation rules, the Commission should recognize that such requests do not reflect a lack of commitment to the Commission's public safety goals, but rather are necessitated by factors outside the control of wireless carriers.

Specifically, Nextel seeks a waiver of the Phase II implementation deadline in order to deploy Assisted Global Positioning System ("A-GPS") location technology. Like VoiceStream, Nextel has provided a detailed explanation of the special circumstances that support its waiver request, including the significant public safety benefits that permitting it to use A-GPS technology would provide. As Nextel demonstrates, the true benefit that Phase II provides is the ability to accurately locate a wireless 911 caller and use of A-GPS technology will allow Nextel to provide a much greater level of accuracy within a reasonable period of time.<sup>10/</sup> Nextel also describes the limited availability of Phase II solutions for wireless carriers using iDEN

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<sup>10/</sup> Nextel Petition at 3-4, 6, 8-9.

technology.<sup>11/</sup> Moreover, Nextel's waiver request suggests a clear path to compliance over time.<sup>12/</sup> Because Nextel has complied with the requirements for a Phase II E-911 waiver set forth in the Fourth MO&O, its request for a waiver should be granted.

HWI is requesting a waiver of the Phase II implementation deadline because no Phase II solution is currently available for its unique SMR system, nor is one expected to become available.<sup>13/</sup> HWI has provided a thorough explanation of these special circumstances and has explained that in order to comply with the Phase II E911 requirements, HWI would have to replace its entire system, including both the network and subscriber units, with a more broadly available technology for which Phase II solutions have been developed.<sup>14/</sup> HWI also demonstrated that requiring it to replace its entire system would most likely drive it out of business, disrupting service to all of its subscribers and depriving the residents of Oahu of a competitive alternative for wireless service.<sup>15/</sup> As HWI noted, this would be particularly wasteful given that it has not received a single E-911 request from a PSAP.<sup>16/</sup> Clearly, HWI's exceptional circumstances justify a waiver, or in the alternative, a two-year extension of the Phase II E911 implementation deadline to replace its entire system if it chooses to do so.

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<sup>11/</sup> Id. at 7-8, 11-17.

<sup>12/</sup> Id. at 3-4, 9-11.

<sup>13/</sup> HWI Petition at 2.

<sup>14/</sup> Id. at 6-7.

<sup>15/</sup> Id. at 7.

<sup>16/</sup> Id.

## CONCLUSION

Because Nextel and HWI have demonstrated exceptional circumstances that satisfy the requirements for a waiver of the Phase II E911 implementation rules, their requests for waiver should be granted.


Respectfully submitted,

AT&T WIRELESS SERVICES, INC.

Howard J. Symons  
Michelle M. Mundt  
Bryan T. Bookhard  
Mintz, Levin, Cohn, Ferris, Glovsky  
and Popeo, P.C.  
701 Pennsylvania Avenue, NW - Suite 900  
Washington, D.C. 20004  
202/434-7300

Of Counsel

January 5, 2001

  
\_\_\_\_\_  
Douglas I. Brandon  
Vice President - External Affairs  
1150 Connecticut Avenue, N.W.  
Suite 400  
Washington, D.C. 20036  
202/223-9222

## **CERTIFICATE OF SERVICE**

I, Michelle Mundt, hereby certify that on this 5th day of January 2001, I caused copies of the foregoing "Comments of AT&T Wireless Services Inc." to be sent to the following by either first class mail, postage prepaid, or by hand delivery (\*):

Nancy Boocker\*  
Deputy Chief  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554


E. Wendy Austrie\*  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

ITS\*  
1231 20<sup>th</sup> Street, N.W.  
Washington, D.C. 20054

Kris A. Monteith\*  
Chief  
Policy Division  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Robert S. Foosaner  
Lawrence R. Krevor  
Laura L. Holloway  
James B. Goldstein  
Nextel Communications, Inc.  
2001 Edmund Halley Drive  
Reston, VA 20191

Elizabeth R. Sachs  
Marilyn S. Mense  
B. Lynn F. Ratnavale  
Attorneys for Hawaiian Wireless, Inc.  
Lukas, Nace, Gutierrez & Sachs  
1111 19<sup>th</sup> Street, N.W., Suite 1200  
Washington, D.C. 20036

  
\_\_\_\_\_  
Michelle Mundt